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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
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Amendment of Section 76.51)
of the Commission's Rules)
to Include Dubuque, Iowa)
in the Cedar Rapids-Waterloo, Iowa)
Television Market)

PETITION FOR RULEMAKING

CEDAR RAPIDS TELEVISION COMPANY

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August 22, 1995

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Dubuque, Iowa
in the Cedar Rapids-Waterloo, Iowa
Television Market

To: Chief, Mass Media Bureau

PETITION FOR RULEMAKING

Cedar Rapids Television Company ("CRTV"), licensee of television station KCRG-TV, Channel 9 (ABC) Cedar Rapids, Iowa, by its attorneys and pursuant to 47 C.F.R. §§ 76.51 and 1.401, hereby submits this petition for expedited rulemaking to amend 47 C.F.R. § 76.51 to change the designation of the Cedar Rapids-Waterloo, Iowa television market to "Cedar Rapids-Waterloo-Dubuque, Iowa."¹

I. INTRODUCTION AND SUMMARY

Section 76.51 of the FCC's rules lists the top 100 television markets and the communities that comprise each market.² Television licensees use this list, among other things, to determine the scope of territorial exclusivity rights under 47 C.F.R. § 73.658(m), network nonduplication rights under 47 C.F.R. §§ 76.92-.97, and syndicated exclusivity

¹ See also Report and Order in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78 & n.150 (1993).

² See 47 C.F.R. § 76.51.

rights under 47 C.F.R. §§ 76.151-.163. Some of the markets on the list -- such as Cedar Rapids-Waterloo, Iowa -- consist of more than one designated community. Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in a market can, and do, compete with one another for programming, audience, and advertisers throughout the market area.³ Hence, the policy underlying the market hyphenation rule is to "equalize competition" for purposes of FCC regulations among stations in genuine competition.⁴

In evaluating requests to add a community to a market, the Commission considers four factors: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.⁵

³ See Amendment of Section 76.51 of the Commission's Rules to Include Goldsboro, North Carolina in the Raleigh-Durham, North Carolina Television Market, 9 FCC Rcd 4387, 4387 (1994) (citing CATV-Non Network Agreements, 46 F.C.C.2d 892, 898 (1974)); Press Broadcasting Company, Inc., Request to Include Clermont, Florida, in the Orlando-Daytona Beach-Melbourne-Cocoa, Florida, Television Market (Notice of Proposed Rulemaking), 8 FCC Rcd 94 (1992). In its 1972 Cable Television Report and Order, the Commission stated that a hyphenated market is a television market "characterized by more than one major population center supporting all stations in the market but with competing stations licensed to different cities within the market area." 36 F.C.C.2d 143, 173 (1972).

⁴ See, e.g., Major Television Markets, 57 R.R.2d 1122 (1985).

⁵ See, e.g., TV 14, Inc. (Rome, Ga.), 7 FCC Rcd 8591, 8592 (1992) (citing Major Television Markets (Fresno-Vidalia, California), 57 R.R.2d 1122, 1124 (1985)); Press Broadcasting Company, 8 FCC Rcd at 95.

As detailed below, the current Cedar Rapids-Waterloo, Iowa market designation does not reflect the competitive condition of the television market in that area. The stations licensed to Cedar Rapids and Waterloo are in direct competition with the station licensed to Dubuque. While Cedar Rapids is 54.3 miles from Dubuque and Waterloo is 75.6 miles from Dubuque, the entire county of Dubuque falls within the Grade B contours of three of the four stations in the Cedar Rapids-Waterloo market. Further, the Grade B contour of the one station licensed to Dubuque significantly overlaps those of the three Cedar Rapids-Waterloo stations. Moreover, Cedar Rapids, Waterloo and Dubuque are economically interdependent, a fact underscored by the "significantly viewed" status of KCRG-TV -- as well as the Cedar Rapids-Waterloo CBS and NBC affiliates -- in Dubuque county. Recognizing that stations licensed to the three communities compete against one another, Nielsen and Arbitron have long designated the market "Cedar Rapids-Waterloo-Dubuque" for ratings purposes.

Absent the requested amendment of Section 76.51, KCRG-TV will suffer continuing and significant competitive harm. The cable system serving Dubuque imports the signals of a distant ABC affiliate, as well as stations airing syndicated programming also carried by KCRG-TV. KCRG-TV cannot assert territorial exclusivity rights with respect to Dubuque, however, because it is not part of the Commission's Cedar Rapids-Waterloo market designation. KCRG-TV is placed at a distinct competitive disadvantage by the inequitable application of these rules because its natural market for programming is being encroached upon, even though it pays substantially more for syndicated programming than do the smaller market stations whose signals are imported. In sum, inclusion of Dubuque among the

designated communities in the market would allow KCRG-TV to exercise its territorial exclusivity rights throughout its actual television market, consistent with the intent of the Commission's rules.

II. THE EXISTENCE OF GENUINE COMPETITION AMONG TELEVISION STATIONS LICENSED TO CEDAR RAPIDS, WATERLOO, AND DUBUQUE INDICATES THAT DUBUQUE SHOULD BE ADDED TO THE MARKET DESIGNATION

Because Cedar Rapids, Waterloo, and Dubuque are in close geographical proximity and are economically integrated, the stations licensed to these communities compete for audience and advertisers. Dubuque is 54.3 miles northeast of Cedar Rapids and 75.6 miles east of Waterloo, and the commercial and cultural life of these cities are intimately connected, particularly with respect to media services.⁶ Indeed, the entire county of Dubuque falls within the Grade B contours of three of the four network affiliates licensed to Cedar Rapids or Waterloo -- KCRG-TV (ABC), KGAN-TV (CBS), and KWWL-TV (NBC). See Exhibit 1 (maps illustrating contours of stations licensed to Cedar Rapids, Waterloo, and Dubuque). Furthermore, while the contour of KFXB-TV (FOX) -- the only station licensed to Dubuque -- does not cover Cedar Rapids or Waterloo, this station recently entered into an agreement with KFXA-TV, Cedar Rapids to, in essence, operate as one station covering the entire Cedar Rapids-Dubuque television market effective August 13, 1995. See Exhibit 2

⁶ Waterloo and Cedar Rapids are connected by U.S. Highway 380; Waterloo and Dubuque are connected by U.S. Highway 20; and Dubuque is connected to Cedar Rapids by U.S. Highway 151.

(press release of KFXA-TV and KFXB-TV "partnership to become the FOX affiliate for the Cedar Rapids DMA. . . . For licensing purposes we need two call letters but from an operational view we will be operating as one station").⁷ The combined contour of KFXA-TV/KFXB-TV substantially overlaps those of all the stations licensed to Cedar Rapids-Waterloo. See Exhibit 1. In short, stations licensed to Cedar Rapids, Waterloo, and Dubuque now compete head-to-head for the same viewers and advertising dollars.

Moreover, KCRG-TV has long served the Dubuque area. A number of entities located in Dubuque regularly buy advertising time on KCRG-TV, including Dubuque Greyhound Park Dog Track, Diamond Jo Riverboat Gambling, Tyson's Foods, and Interstate Power and Light. These businesses advertise on KCRG-TV because KCRG-TV has a substantial viewership in Dubuque. Indeed, KCRG-TV -- as well as KGAN-TV and KWWL-TV -- are "significantly viewed" in Dubuque County.⁸

Given these viewership patterns, it is not surprising that the Nielsen rating service includes Dubuque in the Cedar Rapids-Waterloo-Dubuque metro television ratings. See Exhibit 3 (Nielsen Station Index for Cedar Rapids-Waterloo & Dubuque). Similarly, Arbitron, prior to discontinuing its television ratings service, designated the local market as Cedar Rapids-Waterloo-Dubuque. See Exhibit 4 (letter to Cedar Rapids-Waterloo stations from Arbitron and cover page to the Audience Estimates in the Arbitron Market of Cedar

⁷ The former call sign of KFXA-TV was KOCR-TV; the former call sign of KFXB-TV was KDUB-TV, which was then operated as an ABC affiliate.

⁸ See 1994 Cable & Station Coverage Atlas, 1995 at 86.

Rapids-Waterloo-Dubuque (dated May 1993)). Further, Dubuque County has long been listed within the Cedar Rapids Nielsen DMA and Arbitron ADI. This is strong evidence that the stations licensed to these communities compete with one another.⁹

III. THE ADDITION OF DUBUQUE TO THE CEDAR RAPIDS-WATERLOO MARKET DESIGNATION WILL ALLOW KCRG-TV TO EXERCISE FULLY ITS TERRITORIAL EXCLUSIVITY RIGHTS AND WILL BENEFIT DUBUQUE RESIDENTS BY ENCOURAGING THE CONTINUED PRODUCTION OF LOCAL PROGRAMMING

If the Commission does not add Dubuque to the local television market, KCRG-TV will suffer competitive injury in two ways. First, KCRG-TV will not be able to prevent the cable system serving the Dubuque area (TCI Cablevision of Dubuque, Inc.) from importing the distant signal of ABC affiliate WQAD-TV, Moline Illinois. See Exhibit 5 (channel guide of TCI Cablevision of Dubuque, Inc.). This is so because Dubuque lies outside of the 35-mile protected zone of both Cedar Rapids and Waterloo. Prior to its recent affiliation with FOX, KFXB-TV, Dubuque, Iowa was an ABC affiliate (with call sign KDUB-TV). As such, the station asserted network nonduplication rights to prevent the cable system from importing WQAD-TV, and KCRG-TV was an indirect beneficiary. In the absence of a

⁹ In addition, the Cedar Rapids-Waterloo network affiliates cover news and events of interest to Dubuque viewers. KCRG-TV, KWWL-TV, and KGAN-TV all have full-time Dubuque news bureaus, which have been staffed full-time for several years. KCRG-TV has a live microwave vehicle stationed there full-time and leases a full-time news room location in downtown Dubuque. KWWL-TV broadcasts live from their Dubuque bureau several times per week. KGAN-TV also goes live from Dubuque County with breaking news.

Dubuque ABC affiliate, however, KCRG-TV has lost that protection.¹⁰ Accordingly, hyphenation of the market to include Dubuque will allow KCRG-TV -- and the other Cedar Rapids-Waterloo network affiliates -- to protect their network programming throughout the television market in which they actually compete.¹¹

Second, without the requested hyphenation of the market KCRG-TV cannot prevent the Dubuque cable system from importing the signals of distant stations carrying syndicated programming also carried by KCRG-TV. As stated above, the Dubuque cable system imports the signals of stations WISC-TV, Madison, Wisconsin, and KWQC-TV, Davenport, Iowa. Both stations broadcast the syndicated program "Oprah," which also is licensed by KCRG-TV. Imported stations also duplicate a number of other syndicated programs aired by KCRG-TV, including "Star Trek," "Deep Space Nine," "Home Improvement," "American Journal" and "Rush Limbaugh." KCRG-TV is economically harmed by this inability to prevent the importation into its natural market of syndicated programming.

In addition, representatives of the firms providing the syndicated programming have confirmed that both the Madison and Davenport stations pay substantially less for "Oprah" and "Home Improvement" than does KCRG-TV. Thus, KCRG-TV is at a distinct

¹⁰ CRTV believes that the other network affiliates in the Cedar Rapids-Waterloo market are suffering similar competitive harm. The cable system serving Dubuque imports one distant NBC affiliate, KWQC-TV, Davenport, Iowa, and two distant CBS affiliates, WISC-TV, Madison, Wisconsin and WHBF-TV, Rock Island, Illinois. See Exhibit 5.

¹¹ See Major Television Markets, 57 R.R.2d at 1124-25 (noting harm arising from a licensee's inability to assert network nonduplication and corresponding need for hyphenation of market).

competitive disadvantage due to its inability to invoke syndex protection for its programming investments. Moreover, the value of KCRG-TV's programming investments is unfairly reduced.¹²

Finally, inclusion of Dubuque in the Cedar Rapids-Waterloo designation will encourage KCRG-TV to continue to invest in network, syndicated and local programming that caters to Dubuque residents. Significantly, while KCRG-TV provides Dubuque residents with local news coverage and special programming,¹³ none of the distant signals imported devote resources to such local programming. If the FCC were to deny this request -- and allow the adjacent market stations to expand -- it would jeopardize the continued viability of KCRG-TV's local programming directed to Dubuque.

¹² CRTV notes that the addition of Dubuque to the Cedar Rapids-Waterloo market designation will not affect KCRG-TV's cable carriage because the station already is carried in Dubuque pursuant to a "no compensation" retransmission agreement. In any event, the FCC has noted that this factor has reduced relevance under the must-carry provisions of the 1992 Cable Act, which afford a television station mandatory cable carriage rights throughout the ADI in which it is located. Goldsboro, North Carolina, 9 FCC Rcd at 4388.

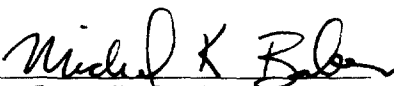
¹³ In addition to its news coverage of Dubuque, KCRG-TV produces various programs responsive to the local needs and interests of Dubuque residents. Recent programs include "Our Town -- Dubuque," a special half-hour show featuring news stories, features and local advertising geared specifically toward Dubuque, and "Dubuque: A Town Divided," an in-depth half-hour program examining racial tensions in Dubuque. KCRG-TV won an International IRIS Award for this program.

IV. CONCLUSION

Consistent with the foregoing, CRTV respectfully requests that the Commission issue a notice of proposed rulemaking on an expedited basis to change the designation for the Cedar Rapids-Waterloo, Iowa market to "Cedar Rapids-Waterloo-Dubuque, Iowa." Such a modification of the market will conform Section 76.51 of the Commission's rules -- as well as the related programming exclusivity rules -- to the competitive reality of the marketplace.

Respectfully submitted,

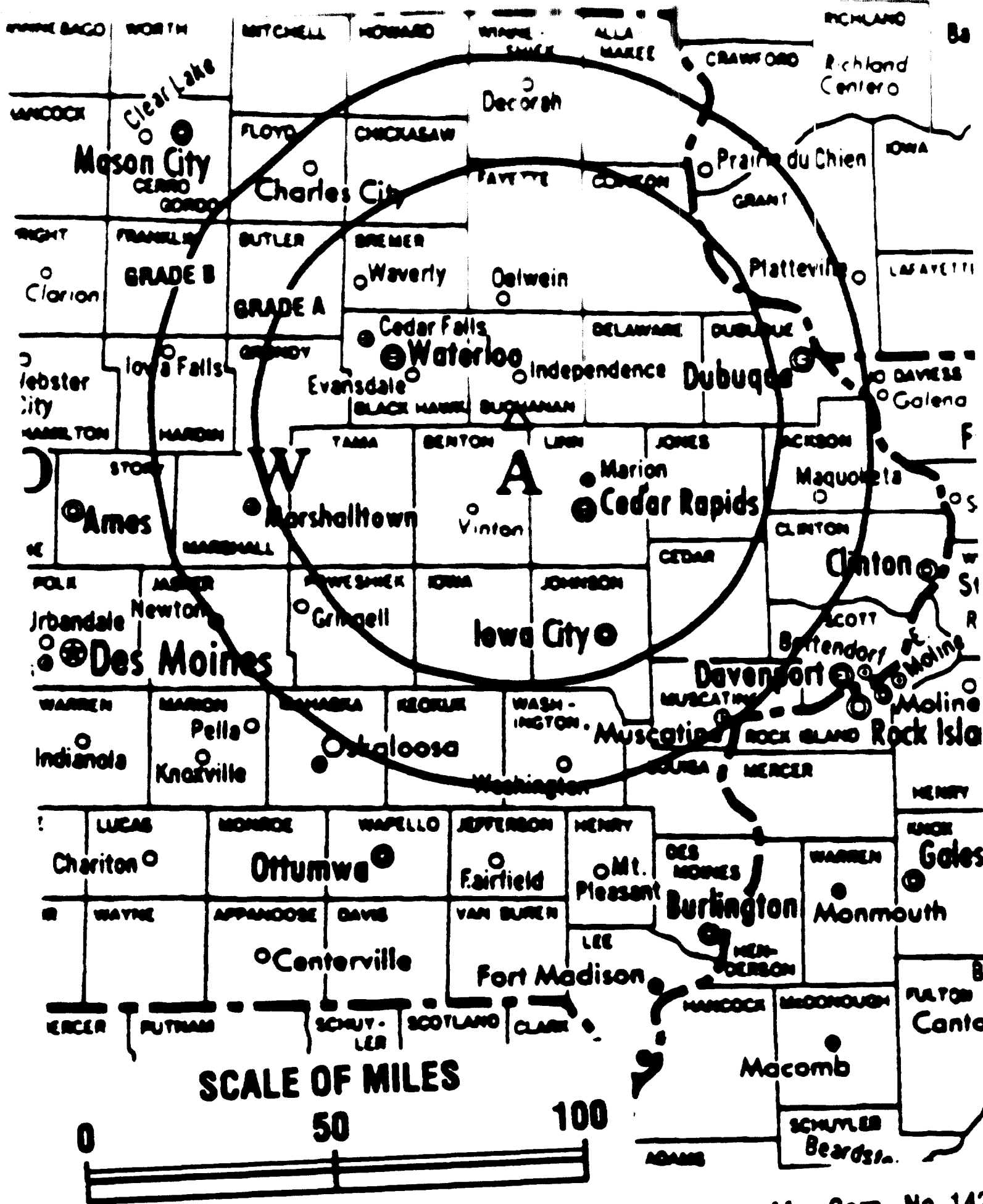
CEDAR RAPIDS TELEVISION COMPANY

By 
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August 22, 1995

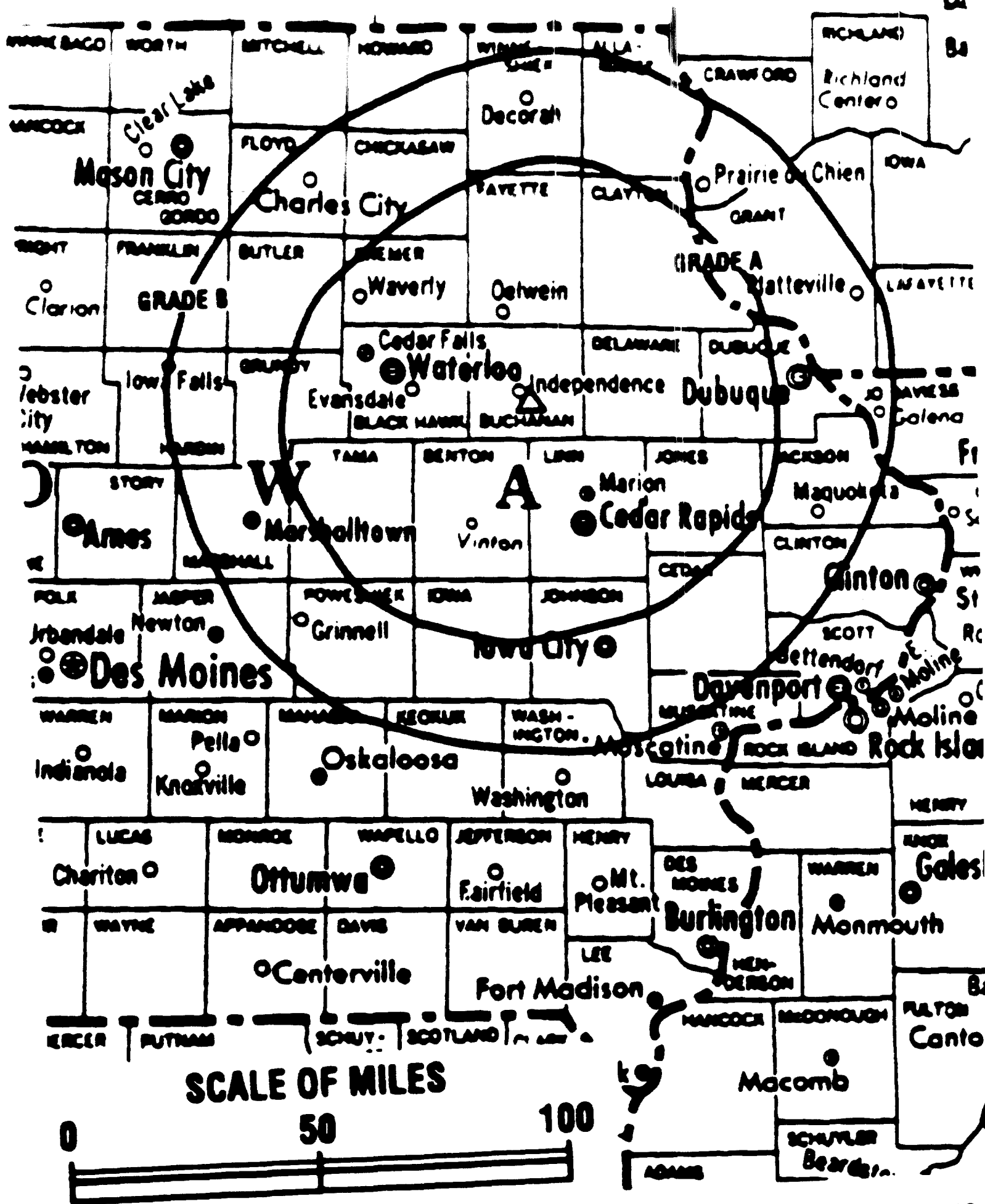
EXHIBIT 1

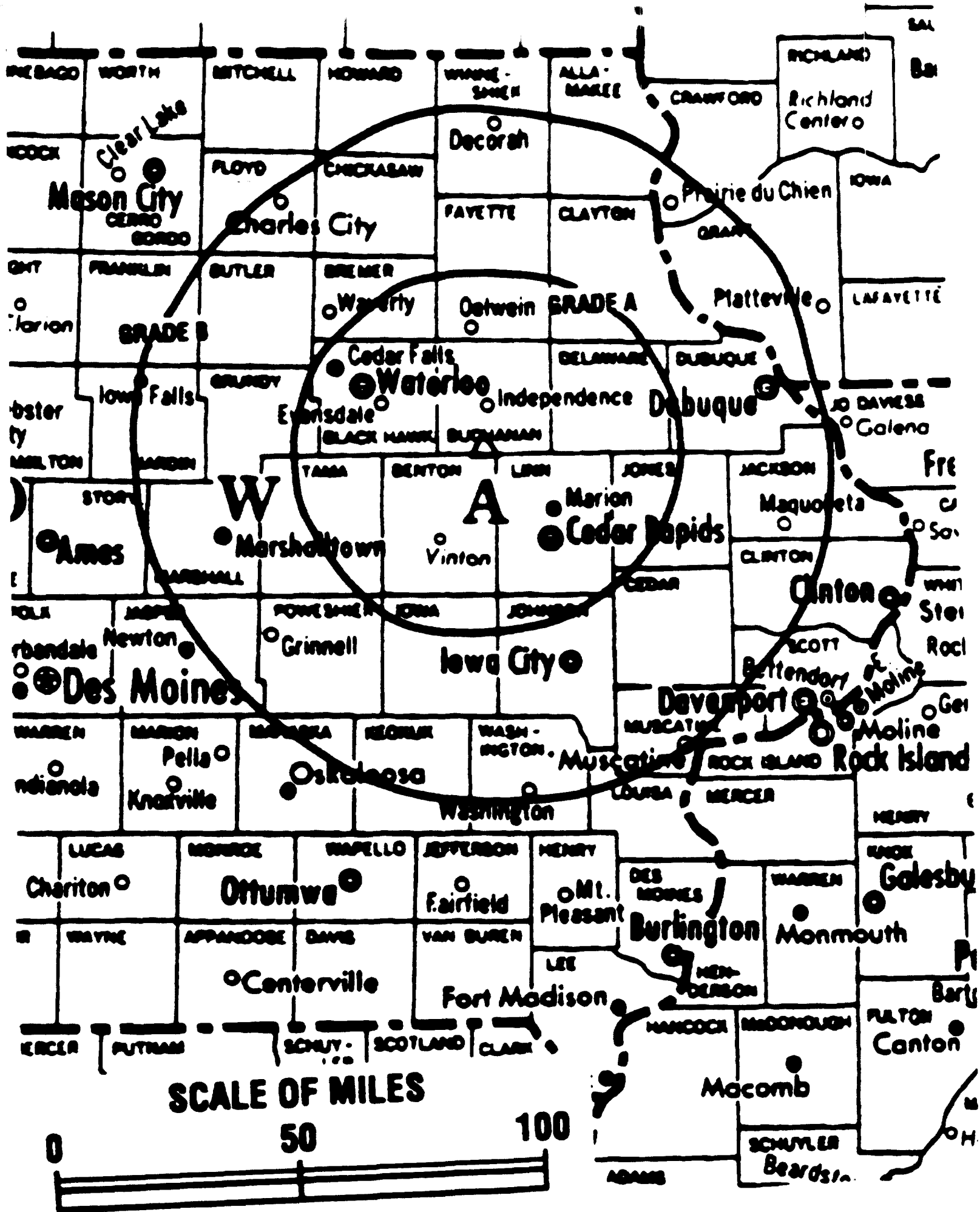
Maps illustrating contours of stations licensed to Cedar Rapids, Waterloo, and Dubuque.

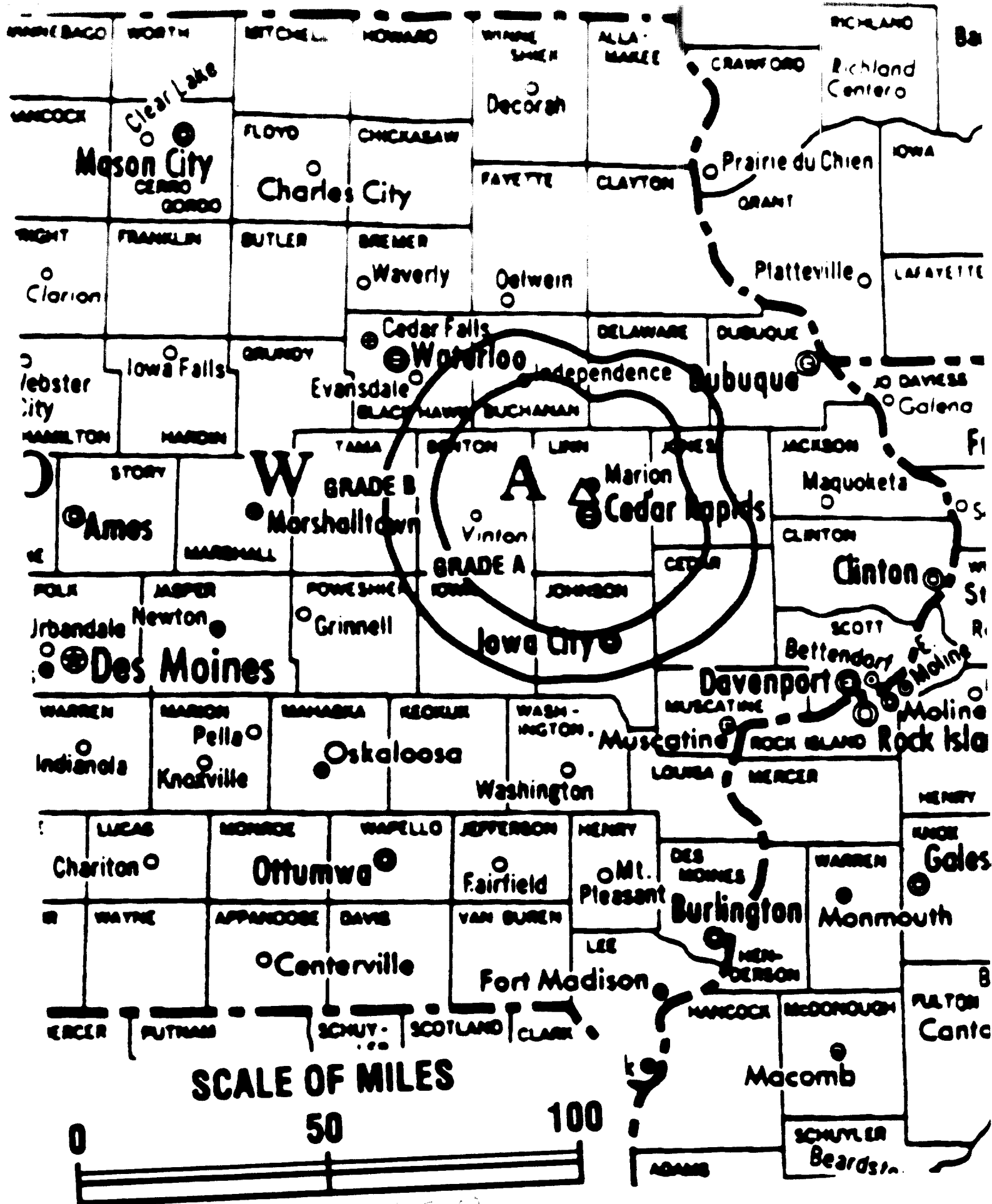


KCRG-TV BMPCT-6432 Granted 1/11/67

© American Map Corp., No. 142



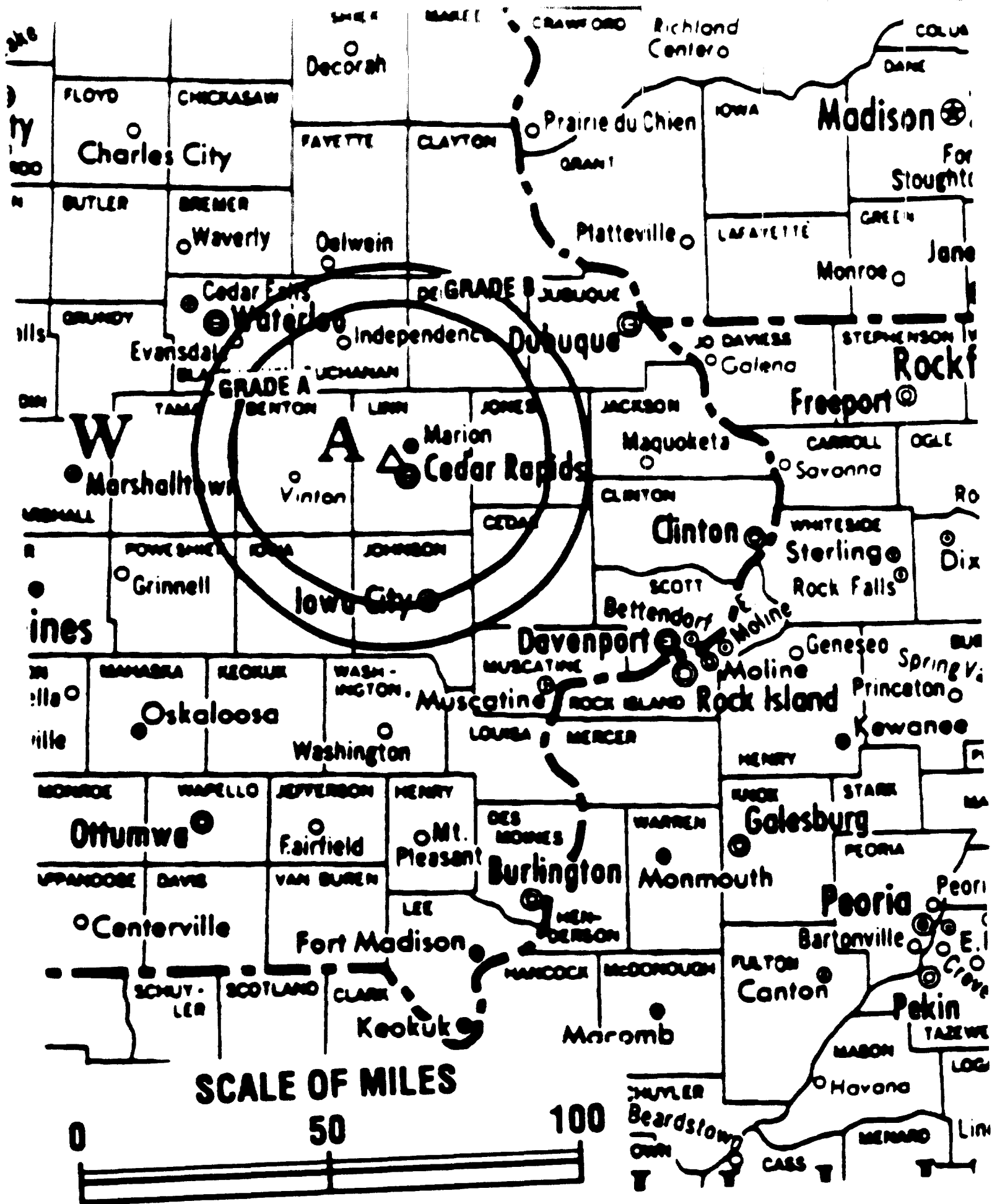




(Current cal. of $K = X^2$)

KOCR BMPCT-880329KL Granted 1/23/89

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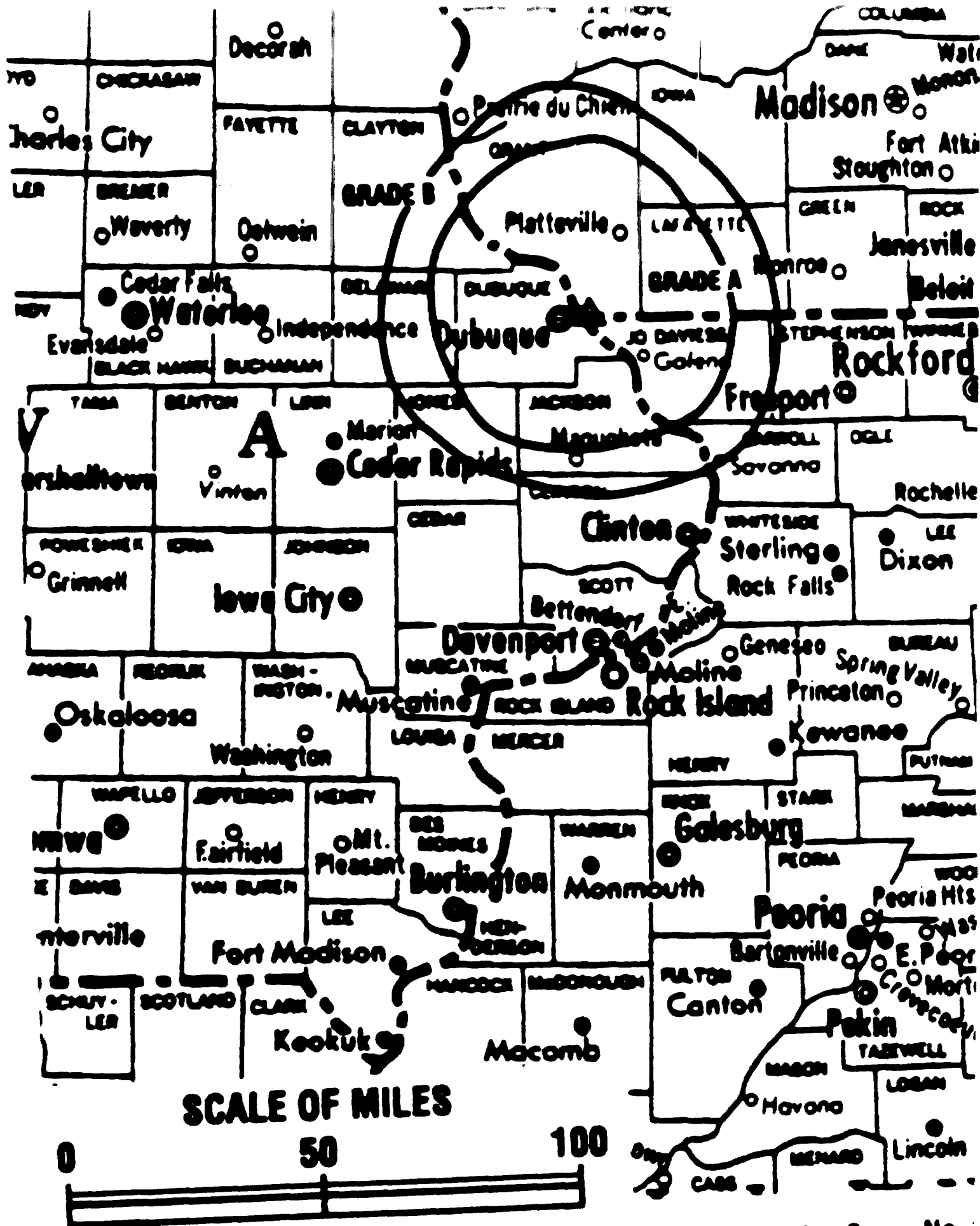


EXHIBIT 2

Press release of KFXA-TV and KFXB-TV

KFXA and KFXB

NFL on FOX An Overview:

KDUB & KOCR have formed a partnership to become the FOX affiliate for the Cedar Rapids DMA. The new call letters will be KFXA for KOCR and KFXB for KDUB. For licensing purposes we need two call letters but from an operational view we will be operating as one station.

KFXA and KFXB will feature ten Bear games, seven Packer games and seven Viking games.

NFL on FOX dominates with:

- More cameras
- The top team of Madden and Summerall
- New Media stars Terry Bradshaw and Howie Long
- Better replays
- The Scorebox
- A closer look at stars
- A behind-the-scenes look at the NFC each week

All this adds up to a winning season on KFXA and KFXB!

EXHIBIT 3

Nielsen Station Index for Cedar Rapids-Waterloo & Dubuque.

Cedar Rapids-Waterloo
& Dubuque, IA

November 1993

*Bob
Linn*

Nielsen Station Index

Cedar Rapids-Waterloo & Dubuque, IA - November 1993 (19)

DMA Rank 83

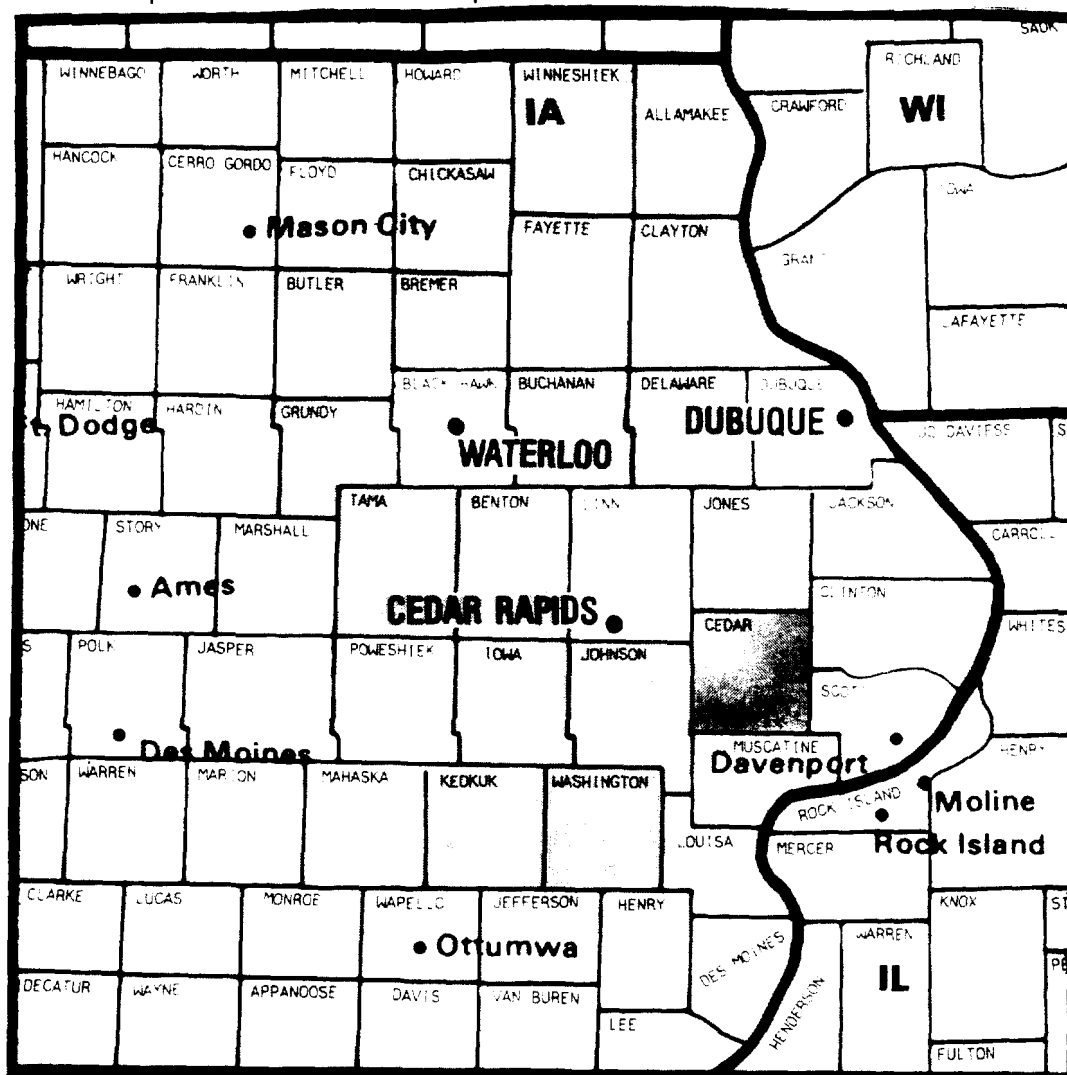
Viewers in Profile

Nielsen



Accredited by
Electronic Media
Rating Council

Cedar Rapids-Waterloo & Dubuque, IA



MARKET TYPE

Metro TV Ratings Estimates

MAP LEGEND

● City Location

— State Line

DOUBLE METRO

CEDAR RAPIDS-
WATERLOO &
DUBUQUE

LOCAL DMA

CEDAR RAPIDS-
WATERLOO &
DUBUQUE

THE NSI® TECHNIQUE

See Table 5 for NSI Area County Lists

INTRODUCTION

NSI techniques and procedures used in compiling the audience estimates in this Viewers in Profile® (VIP®) are described in the current edition of the NSI Reference Supplement. The user should refer to the Supplement for information regarding the sample plan, data reported, examples of standard error calculations, as well as for additional detail on other related topics including those treated briefly below.

The use of mathematical terms to express the audience estimates herein should not be regarded as a representation by Nielsen that they are exact to the precise mathematical values stated.

I THIS NSI ANALYSIS PROVIDES THE FOLLOWING AUDIENCE ESTIMATES:

WEEKLY CUMULATIVE AUDIENCES — by Daypart

- **Households/Persons Reached:** the total number of different TV households/persons (excluding visitors) in TV households reached one or more quarter-hours during the average measured week. Metro Area estimates are shown for the current measurement period. Station Total estimates are for the latest all-market measurement cycle (Nov., Feb. or May) as well as July.

AVERAGE QUARTER-HOUR AUDIENCES — By Daypart and/or by Quarter-Hour or Half-Hour

- **HUT (Households-Using-Television):** television households in the Metro/DMA Area with a TV set turned on as a percentage of Metro/DMA Area TV households.
- **PUT (Persons-Using-Television):** persons in television households in the DMA that are viewing any station or cable service as a percentage of persons in DMA television households.
- **Metro/DMA Area Rating:** television households in the Metro/DMA Area tuned to a specific station or cable service as a percent of the Metro/DMA Area TV households. DMA ratings are also shown for selected persons categories.
- **Metro/DMA Area Share:** television households in the Metro/DMA Area tuned to a specific station or cable service as a percent of the Metro/DMA Area TV households with a set turned on.
- **DMA In-Market Share:** an estimate of the DMA household 4-week share of viewing received by a local commercial station in comparison to the other local commercial stations in the market. This estimate is only reported in the Daypart section.
- **Trend Guide Data:** DMA HUT and Shares are provided for the a) Daypart and Time Period Sections where data are based on the same Daypart/Time Period for the indicated measurement periods (see column headings) and b) Program Audience Averages Section where data are recomputed based on the "normal" program time period in the current VIP for the indicated measurement periods (see column headings).

Users are reminded that Trend Guide data are subject to variations due to several factors, such as sampling error and seasonal variations in television viewing. These factors, as well as other considerations outlined in Section IV of this VIP should be recognized in using and comparing

data from several measurement periods.

- **Station Total Audience:** total U.S. TV households reached.
- **Percent Distribution of Station Total Households:** When Station Total Households are reportable in the Home market they are also shown distributed on a percentage basis between the Home Metro areas, the Home DMA and up to three selected adjacent DMA's. Where applicable, ratings are also shown for the adjacent DMA's. These data are reported for all dayparts during all-DMA measurement cycles only.
- **Audience Composition:** in numbers of persons viewing and their distribution by the demographic categories shown — reported in terms of DMA Ratings and/or Projected Total Persons reached.
- **Time Period Section:** Audience estimates are shown (a) as 4-week averages for the dates shown on the cover (exclusions due to special events or other unusual circumstances, if any, are listed on Page 3), and (b) as program time period estimates excluding preemptions, if any. Such "pure" program audience estimates are reported for local stations only.
- **Adjacent Quarter-Hour Averages:** The average of data for the current quarter-hour and the previous quarter-hour, reported for each time period break. Shown are DMA ratings plus Station Totals for households and selected demographic categories.
- **DMA Weekly Ratings:** Program Audience and Time Period DMA Household Ratings are shown for each week of the measurement. Weekly ratings are limited to Markets for which the specified minimum in-tab sample for the week meets the standards shown in Section A.III.A of the NSI Reference Supplement. If this market includes week-by-week ratings, measurement periods where data are provided will be indicated in the Measurement Schedule on Page 3.
- **Program Audience Average Section:** A retabulation of the program audiences (excluding preemptions where applicable). For a description of the rules and procedures for averaging audience data for this section, see the NSI Reference Supplement.
- **Persons Share Section:** Persons in the DMA tuned to a specific station as a percent of the DMA Persons-Using-Television (PUT) for this survey interval and three prior intervals.
- **TV Households and Persons Trend Section:** Households Using Television (HUT) and Persons Using Television (PUT) are trended for all-DMA measurement periods for this period and four prior years. Rating and Share data are summarized for local commercial stations.

To avoid the implication that the reported averages represent normal operating conditions at all times, a section on "Operating Notes" is included showing dates and times of unusual operating conditions as reported by the stations.

II AREAS MEASURED

Metro Area: the Metro Area is the Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget brought to county line basis to include counties having over 50% of their population in the Metro Area. In the absence of an established Metro Area, or where in Nielsen's judgment the Metro Area may not represent the TV market(s) served by a group of TV stations, a group of

(Continued on Inside Back Cover)

EXHIBIT 4

Letter to Cedar Rapids-Waterloo stations from Arbitron and
cover page to the Audience Estimates in the Arbitron Market of
Cedar Rapids-Waterloo-Dubuque (dated May 1993)

To: J. GANAH L	From: MICATSK
KCRG	Co. The ARB
	Phone # 312-266-4105
	Fax # (312) 266-4177

we would like to review,
for the record, the changes in the Arbitron Local Market Report for
Cedar Rapids/Waterloo and Dubuque, effective with the November 1983 report:

- 1) Title will change to Cedar Rapids/Waterloo/Dubuque.
- 2) Dubuque County remains in the ADI
- 3) The Metro Share Column will become "Metro 2" which will be Dubuque County.
- 4) The 1983/84 ADI market definitions will not be changed to add KDUB shares to the current three (3) stations; a 4-station total share will be used to calculate market shares for the 84/85 ADI update.

John:
This was agreed to
By the 3 C.R./Waterloo
stations as well as
KDUB.

T H E A R B I T R O N C O M P A N Y

Television Market Report

Audience Estimates in the Arbitron Market of

**Cedar Rapids-
Waterloo-Dubuque**

May 1993

April 28 - May 25